



MEMORANDUM

Date: January 24, 2006
To: Coastal Conservancy
From: Sam Schuchat
Subject: Additional Information on proposed Los Cerritos Wetlands Authority

Introduction

At our December 8, 2005 meeting, members of the Conservancy had a number of questions about the proposed Los Cerritos Wetlands Authority (Authority). Staff committed to provide the Board with additional information about this project in advance of the discussion of the item at the February 3, 2006 meeting. This memo provides information about the project and addresses questions that were raised by Conservancy members.

These wetlands are the last privately held coastal wetlands identified for acquisition in the Wetland Recovery Project Regional Strategy, which the Conservancy helps implement. This is a project that the Coastal Conservancy has been actively pursuing for more than twenty years. In the early 1980s, the Conservancy developed a conceptual restoration plan for a portion of the Los Cerritos wetlands. At one point, the Conservancy held an option for the purchase of a portion of the site, but that deal fell through when a condition to exercise of the option (Coastal Commission approval of a permit to consolidate oil operations offsite) failed. The Conservancy subsequently provided grant funding to the Trust for Public Land to pursue acquisition of each of the Los Cerritos properties, and that grant is still in effect. The Conservancy has also funded several planning efforts at the site. Recently, the Conservancy has helped fund extensive site assessment work to characterize the residue from former oil operations in the project area. While all our partners are supportive of this project, the Conservancy has been the central figure pursuing protection and restoration of this site longer than any of the other parties.

Why is the Los Cerritos Wetlands Authority needed?

A key focus of the Conservancy's work at Los Cerritos over the past several years has been to identify an appropriate partner to take the lead on the project. Although a number of public agencies have expressed interest in the resolution, it is staff's opinion that none of these potential partners has the capacity to implement the project on its own. Through a Joint Exercise of Powers Agreement, the

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Authority can pool the strengths and resources of the local and state agencies to implement the project. Acquisition and restoration of the site requires both the ability to manage property and expertise in restoration project management. The project area crosses local jurisdictions: it is in both the City of Seal Beach in the County of Orange and in the City of Long Beach in the County of Los Angeles.

Almost every major wetland restoration project in California is being undertaken by multi-agency teams or partnerships. At Bolsa Chica, a steering committee was formed that includes eight state and federal agencies, including the Coastal Conservancy. Restoration planning for the South San Francisco Bay Salt Ponds is being implemented through a partnership of local, state and federal agencies, under a Memorandum of Understanding. The Conservancy has participated in many Army Corps of Engineer restoration projects through Federal Cost Share Agreements. The proposed Joint Exercise of Powers Agreement would establish another form of multi-agency partnership to implement this project.

One key need that distinguishes the Los Cerritos project from those described above is for a public entity that can hold title to the property while a comprehensive restoration program is developed and implemented. Most wetland projects involve a single public agency ownership, whereas the Los Cerritos wetlands includes properties in separate private ownerships and jurisdictions that must be independently acquired but restored in a comprehensive manner. The local agencies are better suited to carry out property management functions during the period of acquisition, planning and restoration, but because the property crosses city and county jurisdictions, no one entity can do so for the entire complex. State and federal agencies, while supportive of the project, can not take on the land ownership responsibility at this time, and those that are located far from the project site, like the Conservancy, are ill-suited to carry out day-to-day management tasks. The Los Cerritos Wetlands Land Trust, a nonprofit organization, has offered to hold title to the property. However, the property needs to be owned by a public entity if port mitigation funds are to be used for the restoration of the site. The Port of Long Beach has indicated interest in funding restoration of these properties if acquired.

While the cities of Seal Beach and Long Beach are interested in the long-term restoration and protection of the Los Cerritos Wetlands, they do not have expertise in restoration planning and management. Through the City, the Port of Long Beach may be able to contribute some expertise as well as funding for restoration that serves its mitigation needs and is within its area of experience, but this is not true for all of the Los Cerritos properties. Membership in the Authority provides a mechanism and opportunities for the two Conservancies to directly contribute staff resources and knowledge to the restoration process.

What is the Los Cerritos Wetlands Authority?

The Los Cerritos Wetlands Authority would be a separate entity, created by an agreement entered into by the partner agencies, to provide for a comprehensive program of acquisition, protection, conservation, restoration, maintenance and operation and environmental enhancement of the Los Cerritos Wetlands area. As shown on Exhibit 1 of the proposed Joint Exercise of Powers Agreement (Agreement), the Authority also has a limited geographic scope, encompassing about 400 acres.

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The Agreement proposed for the Los Cerritos Wetlands would involve four government entities: the City of Seal Beach, the City of Long Beach, the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy and the State Coastal Conservancy. The Joint Exercise of Powers Act, Section 6500 *et seq* of the California Government Code, allows for two or more public agencies to establish a joint powers authority (JPA) to exercise powers common to all of the member agencies. Thus, the Authority will have only those powers that are common to all of its members; if any one member agency lacks a particular authority, then the JPA may not exercise that type of authority. However, it is not necessary that any common power be exercisable by each party with respect to the geographical area in which it is to be jointly exercised. Thus, as a member of a JPA, the City of Seal Beach may participate in a project located in the City of Long Beach and the County of Los Angeles, even though those areas are otherwise outside the jurisdiction of Seal Beach.

Pursuant to the proposed agreement and Joint Exercise of Powers Act, the Authority will have the following powers:

- To acquire, hold or dispose of property, although it does not have the ability to acquire property via eminent domain.
- To make and enter contracts
- To employ agents and employees
- To sue and be sued in its own name
- To utilize the services of its member agencies' employees, with their consent
- To obtain public liability and other insurance for itself, its member agencies, and officers and employees of any of them

The Joint Exercise of Powers Act also imposes responsibilities upon a JPA established as a separate legal entity, including the following:

- To file notices, information and other documents with the Secretary of State
- To strictly account for all funds and report on receipts and disbursements, and file annual audits with the member agencies
- To designate a treasurer responsible upon his or her official bond for the safekeeping and disbursement of all agency money, and an auditor or controller from the same public agency as the treasurer
- To provide for the disposition, division or distribution of any property acquired as a result of the joint exercise of powers and for return of any surplus money in proportion to contributions made

The Authority will have a Board, consisting of representatives of each of the member agencies. The Coastal Conservancy's representative on the Board will be its Executive Officer. As specified in the Agreement, the Authority shall exercise its powers in the same manner as the City of Long Beach. The City of Long Beach shall also act as the Authority's treasurer and the Auditor of Long Beach shall act as the auditor and controller of the Authority. Thus, much of the day-to-day work of the Authority would be performed by staff of the City of Long Beach pursuant to provisions of law, ordinance and procedure that govern the City's actions. Conservancy staff can directly participate in the Authority's activities in those areas in which it is best suited, such as restoration planning, public information and participation, and possibly legal matters. Formal decision-making and other undertakings of the Authority as an entity would require a majority vote of all of the member agency representatives.

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Why should the Coastal Conservancy participate?

The purpose of the Authority is to implement a comprehensive program of acquisition and environmental enhancement of the Los Cerritos Wetlands area. The Conservancy has the most experience of any of the proposed member agencies developing and implementing wetland restoration projects. As discussed above, for more than twenty years, the Coastal Conservancy has led the efforts to acquire and restore this property.

Use of a joint powers authority offers the opportunity for member agencies to exchange services among each other in order to carry out the Authority's purposes. Through this vehicle, and through membership on the Authority's Governing Board, the Conservancy will have the ability to more directly facilitate project development and influence outcomes than would be the case if the Conservancy did not participate.

The scope of this project is beyond the capacity of any local entity without significant state and/or federal contributions. While entering the JPA does not commit the Conservancy to fund any project, it does formalize our commitment to the overall enterprise and our support. Technically, the Coastal Conservancy does not have to participate in the Joint Exercise of Powers Agreement in order for the Authority to be created, but staff and the other JPA partners believe that the Conservancy's participation in the project is critical to its implementation.

What oversight does the Coastal Conservancy have over the Authority?

The Conservancy Board will exercise decision-making authority over the following aspects of the Authority:

- Authorize the Joint Exercise of Powers Agreement
- Appoint the Conservancy representative to the Authority Board
- Approve the annual budget adopted by the Authority Board
- Approve any financial commitments by SCC to the Authority
- Approve any change in membership of the Authority
- Approve any amendment to the Joint Exercise of Powers Agreement

In addition, the Executive Officer of the Conservancy (or his designee) will serve as one of the four members of the Authority's Governing Board. Generally, approval by the Authority's Governing Board will require a majority of those members present and voting. However, a minimum of three votes is required for specific actions, including adoption of annual budgets, authorization to accept, acquire or convey interests in property, or the addition of other public agencies as Parties.

It is anticipated that the Conservancy's contribution to the Authority will through in-kind services provided by Conservancy staff. Thus, Conservancy staff will also be involved in the development and administration of Authority projects and acquisitions.

What financial obligation is the Conservancy accepting by being a party to the Authority?

The annual budget of the Authority and any expenditure by the Conservancy for the Authority will be subject to separate approval by the Coastal Conservancy. As a member of the Authority, the

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Conservancy and others would be expected to make an annual contribution not greater than \$25,000 to cover project management and administrative expenses. Conservancy funding of land acquisition, restoration planning and implementation or property management would require a separate Conservancy authorization, in the same manner as pertains to all Conservancy project funding.

It is anticipated that the majority of the Conservancy's contribution to the operation of the Authority will be via in-kind services. It is also expected that the Conservancy would contribute funds to the acquisition and restoration of the Los Cerritos property whether or not the Conservancy signs the Agreement. Alternatives being considered for funding the Authority include management endowments for the property, to be negotiated as part of acquisition agreements.

Is the Conservancy exposed to any potential liability by joining the Authority?

The Joint Exercise of Powers Act provides that the debts, liabilities and obligations of a JPA are the debts, liabilities and obligations of the parties to the agreement, *unless the agreement specifies otherwise*. Section 11 of the Agreement expressly provides that the debts, liabilities, contracts and obligations of the Authority are not the debts, liabilities, contracts and obligations of any of its member agencies. The issue was litigated in Tucker Land Co v. State of California where the court found that members agencies are not responsible for the contractual liabilities of a Joint Exercise of Powers Authority.

For a fuller discussion of potential Conservancy liabilities as a JPA member, please see the confidential legal memorandum distributed to board members only with this memo.

What assurance does the Conservancy have that the JPA will not acquire contaminated property?

It is the policy of the Coastal Conservancy to protect the agency from any liability that could result from its involvement in acquisition of property and to determine, prior to the disbursement of Conservancy funds to a grantee acquiring property interests, that appropriate due diligence has been performed and adequate protections are in place, even where the Conservancy does not itself take title. The Conservancy has helped fund several technical studies of the Los Cerritos project area to fully characterize the site conditions. As part of the negotiation of the terms of acquisition, the Conservancy is working with the appropriate regulatory agencies to determine what level of clean-up should be required prior to transfer of title and restoration of the site. As is the case with all Conservancy-funded property acquisitions, staff and agency partners will:

- work to spell out any required clean-up in the terms of the purchase agreement;
- seek indemnification from all environmental liability from the current owners or other responsible parties;
- purchase insurance policies or secure other agreements necessary to further protect the JPA and member agencies, where appropriate.

These terms and other arrangements would be presented to the Conservancy for approval with respect to a specific acquisition.

Will the Authority be a permanent land manager?

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It is expected that the Authority will hold title to the property during the period of restoration planning and implementation. Once the property is restored, there are other agencies that could own and manage it. In the past, the Department of Fish and Game (DFG) expressed interest in the property, but the agency does not have the resources to manage the site during the restoration process. The US Fish and Wildlife Service has also expressed interest in managing the property in conjunction with the nearby Anaheim Bay Wildlife Refuge once it has been restored.

Is this an open-ended commitment?

The Agreement includes specific provisions for withdrawing from the Agreement and for the disposition of property acquired by the Authority. If the Conservancy wishes to withdraw, it must give three months notice and must satisfy the other parties that any pending legal, environmental or financial obligations it has assumed under or pursuant to the Agreement have been resolved. Each financial contribution by the Conservancy to the Authority will have to be approved by the Conservancy's Board, as will the annual budget of the Authority.

Staff proposes that the Conservancy participate fully through the acquisition and restoration phase and then to find a long-term land management solution (see description above). When restoration is completed the land could be transferred to some of the partner agencies, a different agency such as DFG or USFWS, or the JPA could continue to hold the land. If the latter choice is made, that would be an appropriate time for the Conservancy to re-evaluate its role in the JPA and consider withdrawing.

Is this an appropriate role for SCC?

The Authority will only exercise those powers which are common to all of the member agencies and will not exceed those of the Conservancy under Division 21 of the Public Resources Code. Broadly speaking, Division 21 empowers the Conservancy to undertake projects that involve the restoration, preservation and enhancement of coastal resources and to acquire, hold title to and maintain lands in order to carry out these objectives. These are exactly the same activities which the Authority is authorized to undertake pursuant to the powers enumerated in the Joint Exercise of Powers Agreement. The Conservancy has entered into joint exercise of powers agreements with other state Conservancies in the past, though the Conservancy has never been a party to a JPA that created a separate entity. Over the years, the Conservancy has also been involved in many similar formal and informal partnership arrangements, for example:

Santa Monica Mountains Conservancy and Baldwin Hills Conservancy - the Coastal Conservancy is an ex-officio member of the Boards of these Conservancies

San Diego River Conservancy – the Executive Officer sits on the Board of this Conservancy representing the Resources Agency

Santa Monica Bay Restoration Commission – the Coastal Conservancy is a voting member of the Governing Board of the Santa Monica Bay Restoration Commission

Southern California Wetland Recovery Project – The Conservancy is one of the seventeen agencies that signed the Memorandum of Agreement that created the Wetland Recovery Project, the Conservancy staffs the Wetland Recovery Project.

South Bay Salt Pond Restoration Executive Committee – The Coastal Conservancy is one of three members of this committee established by MOA.

Ocean Protection Council – Pursuant to provisions of statute, the Executive Officer of the Conservancy serves as Secretary to the Council and Conservancy staff acts as staff to the Council

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The Coastal Conservancy's mission is to act with others to preserve, protect and restore the resources of the California Coast and the San Francisco Bay Area. Throughout the state, the Conservancy pursues projects that would not be completed without our involvement. The long history and complicated nature of this project, makes it a perfect example of why the Conservancy was created.